

**Non Raceday Inquiry RIU v S L Ross - Reserved Decision dated 24 September 2020 - Chair, Mr B J Scott**

**Rules:**

**Repondent(s)/Other parties:**

**Name(s):**

**Decisions:**

**BEFORE A JUDICIAL COMMITTEE OF THE JUDICIAL CONTROL AUTHORITY**

**Information Numbers:** A8716, A8717, A8718, A8719

In the matter of the New Zealand Greyhound Racing Rules

**BETWEEN:**

**RACING INTEGRITY UNIT**

Informant

**AND**

**SHIRLEY LORAINE ROSS**

Respondent

**Judicial Committee:**

B J Scott – Chair

A Smith – Member

**Present:**

Mr A Cruickshank – for the Informant

Mr N Webby – Counsel for Informant

Ms S L Ross – Respondent

Ms J K Gilby-Todd – Counsel for the Respondent

**RESERVED DECISION OF JUDICIAL COMMITTEE DATED 24 SEPTEMBER 2020**

**CHARGES:**

**A8716**

On the 9th day of July 2020, at the Waikato Greyhound Racing Club meeting, Cambridge Raceway, Taylor Street Cambridge did an act detrimental to the interests and welfare of Greyhound Racing by using a dummy electronic aversion device (shock collar), in breach of New Zealand Greyhound Racing Health and Welfare Standards thereby committing a breach of Rule 62.1(q) AND IS therefore liable to the penalty of penalties that may be imposed pursuant to Rule 63.1 of the said Rules.

**A8717**

On the 9th day of July 2020, at 158 Park Road, Horotiu did obstruct a Racing Integrity Unit Official, who was undertaking an investigation into the use of an electronic aversion device, by refusing to answer questions related to the investigation thereby committing a breach of Rule 62.1(g) of the New Zealand Rules of Greyhound Racing AND IS therefore liable to the penalty or penalties which may be imposed pursuant to Rule 63.1 of the said Rules.

**A8718**

On the 9th day of July 2020, at 158 Park Road, Horotiu did fail to comply with the lawful order of a Racing Integrity Unit Official, by refusing to state the location of or provide to Officials all electronic aversion devices held on the property thereby committing a breach of Rule 62.1(p) of the New Zealand Rules of Greyhound Racing AND IS therefore liable to the penalty or penalties which may be

imposed pursuant to Rule 63.1 of the said Rules.

## **A8719**

On the 9th day of July 2020, at 158 Park Road, Horotiu did make a statement which was known to be false to a Racecourse Investigator in the execution of his duty thereby committing a breach of Rule 62.1(w) of the New Zealand Rules of Greyhound Racing AND IS therefore liable to the penalty or penalties which may be imposed pursuant to Rule 63.1 of the said Rules.

### **RULES:**

#### **Rule 62.1**

*Any person (including an Official) commits an offence if he/she:*

*(q) commits or omits to do any act or engages in conduct which is in any way detrimental or prejudicial to the interest, welfare, image, control or promotion of Greyhound Racing;*

*(g) assaults, obstructs, impedes, abuses, threatens or insults the Board, any member of the Board, a Club, any member of a Club Committee, any Steward, any member of a Judicial Committee and any member of the Appeals Tribunal or any other Official;*

*(p) disobeys or fails to comply with the lawful order of a Steward or other Person having Official duties in relation to Greyhound racing;*

*(w) makes any statement which is to his/her knowledge false either orally, by print, in writing, by electronic means or by any combination thereof to a member of the Board, Steward, Racecourse Investigator, Appeals Tribunal, a Judicial Committee, Veterinarian or an Official in the execution of his/her duty.*

### **PENALTY:**

#### **Rule 63.1**

*1. Any Person found guilty of an Offence under these Rules shall be liable to:*

*a. a fine not exceeding \$10,000.00 for any one (1) Offence except a luring/baiting Offence under Rule 86; and/or*

*b. Suspension; and/or*

*c. Disqualification; and/or*

*d. Warning Off.*

### **SUMMARY OF FACTS:**

The Respondent, Ms Shirley ROSS is an Owner Trainer under the Greyhound Racing New Zealand Rules.

On Thursday 9th July 2020 the Respondent, Ms Shirley ROSS was at the Waikato Greyhound Racing Club meeting in Cambridge. She had four greyhounds entered to race that day.

At about 10.00am Ms ROSS kennelled her greyhound in the confines of the kennel block.

### **INFORMATION A8716**

Shortly after one of the kennelling staff employed by the Racing Club advised Stipendiary Stewards that there was a suspicious collar on the greyhound "Sovereign Pride" which is trained by Ms ROSS.

"Sovereign Pride" was due to race in Race 5 'The Clubhouse Sports Bar Sprint C2 375m'.

Stewards entered the kennels and found "Sovereign Pride" wearing what appeared to be a 'shock collar'. The collar contained a battery and had two metal prongs which when worn by the greyhound press against the dog's neck.

Clause 4.6 of the New Zealand Greyhound Racing Association Incorporated Health & Welfare Standards provides that the use of aversive electronic training devices is prohibited. As a result the collar was seized, the dog scratched and Ms ROSS spoken to.

Ms ROSS was adamant that there was no issue as the device does not work. She stated numerous times that she would never use a 'shock collar' on one of her dogs as she thought it was cruel.

It was explained to Ms ROSS that using a 'shock collar' on a greyhound and then putting a dummy 'shock collar' on was of no relevance to the dog. The dog would expect that the dummy collar was capable of administering the same shock as the working 'shock collar'.

The collar located on "Sovereign Pride" has not been tested to confirm whether it works or whether it is in fact a dummy collar. A search of Ms ROSS' vehicle and trailer failed to locate the remote for this device.

The Chief Veterinary Advisor to Greyhound Racing New Zealand, Dr Malcom Jansen has provided a report on the use of 'shock collars' in Greyhound Racing. His report is annexed to this Summary of Facts.

#### **INFORMATION A8717**

Racing Integrity Unit (RIU) staff met Ms ROSS at her training facility at 158 Park Road, Horotiu as she returned home at the conclusion of the race meeting.

Ms ROSS was obstructive throughout the RIU attendance. She refused to answer questions, was misleading in the responses she gave, and repeatedly denied there was another 'shock collar' at the property. After several minutes she did admit that there was one at the property but refused to state where it was.

#### **INFORMATION A8718**

Despite being directed several times to provide all shock collars on the property Ms ROSS refused. She was warned numerous times that her obstructive conduct amounted to the commission of various racing offences, however she stated that the RIU were making a big deal out of nothing.

As a result of her refusal to provide the 'shock collar' RIU staff commenced a search of her kennelling block. Ms ROSS was angry with this and stated "I don't think you've got the right to go through all my ... next thing you will want to go through my house".

The garage was clearly set up for use as the training facility and kennel of the greyhounds. It contained beds, medicine/treatment cabinet, syringes and other greyhound training related items.

It was pointed out on several occasions to Ms ROSS that her obstructive nature, coupled with the use of the 'shock collar' could result in serious charges and Greyhound Racing New Zealand issuing her with a 'show cause' notice.

Ms ROSS denied ever having used a 'shock collar', however did admit to using a dummy.

After nearly 10 minutes of direction and warnings Ms ROSS finally showed RIU staff where the shock collar was located. She stated "It doesn't belong to me", "I have not done anything wrong".

The collar was located on a set of drawers in the garage where the search was being undertaken. The device was turned on and the remote was set to 80/100. This appeared to be the strength of the shock to the animal. In this case 80%. The collar was seized.

#### **INFORMATION A8719**

Ms ROSS was asked several times who gave her the shock collar. She replied "You can't do that to me. That's not very fair". She eventually stated that the collar was lent to her a week earlier and that the same person had given her both collars.

She refused to state who had given it to her despite being further warned. She stated that she had used the dummy collar on "Sovereign Pride" three times because he barked and that the dummy collar stopped him from barking.

Ms ROSS stated that she didn't think the person who had given her the 'shock collar' was still a licence holder under Greyhound Racing New Zealand Rules but indicated that the person had previously been involved.

She also indicated that she could name at least three people who use these devices but when asked who these persons were she refused to name them.

When Ms ROSS was advised that her response to the question of who gave her the 'shock collar' could be the difference between remaining a licence trainer and not she replied "I don't care. You can take my licence for that matter. I'm not going to dob people in. I don't think that's fair." "No I can't do that". She then stated "It wasn't given to me by a licenced person, I picked it up on the side of the road".

The Respondent, Shirley Loraine ROSS is a licensed greyhound trainer living in Horotiu. She has been involved in Greyhound Racing for over 30 years. She has one previous Rule Breach in 2000 for a drug positive for which she had her Trainers Licence suspended for 6 months.

Mr Cruickshank produced a letter dated 17 July 2020 signed by the General Manager of the Racing Integrity Unit authorising the charges to be lodged against Ms Ross.

#### **EVIDENCE OF A CRUICKSHANK:**

1. That is my name. I am a Senior Racing Investigator employed by the Racing Integrity Unit.
2. On Thursday 9 July 2020 I was contacted by Stipendiary Steward Philippa Kinsey who advised that she had taken what appeared to be a shock collar off a greyhound in the kennel block at the Waikato Greyhound Racing Club meeting in Cambridge.
3. I also spoke to the Racing Integrity Unit Chief Stipendiary Steward, Mr Scott Wallis.
4. As a result of those conversations I went to the Cambridge Raceway on Taylor Street, Cambridge.
5. I spoke to Ms Kinsey who showed me a collar that she had removed from a greyhound in the kennels earlier in the day (REF EXH).

6. The greyhound was "Sovereign Pride" trained by the Respondent, Ms Ross.
7. We then had discussions about going to Ms Ross' training establishment in Horotiu in order to see if there was a remote for the device.
8. We arrived at the property at about 5pm as Ms Ross returned from the race meeting.
9. I introduced myself and explained why we were there and what we were looking for.
10. Ms Ross was not happy to see us at her kennels.
11. Ms Ross showed us to the kennelling block where we discussed what had happened earlier in the day.
12. When it became apparent that Ms Ross was going to be obstructive and uncooperative I advised her that I would be turning on my voice recorder, which I did.
13. The full transcript is attached (PRO EXH).
14. Located in the kennel block was a shock collar and remote (REF EXH).
15. Ms Kinsey showed me that it was turned on and set to 80/100. This appears to be 80 power, meaning the dog would be shocked at this level.
16. As a result of Ms Ross' obstructive and uncooperative behaviour I was unable to ascertain who gave her the shock collar or whether there is wide spread use of these collars by Greyhound Trainers as Ms Ross had indicated whilst we were talking to her.
17. On Monday 14 July I received a phone call from a Licensed Greyhound Trainer from the Central Districts, Mr Bernie Mitchell.
18. Mr Mitchell was not present for any of the investigation or present at this particular race day.
19. He is however fully supportive of Ms Ross and her conduct, which was the purpose of his call.
20. During the course of the phone call Mr Mitchell unwittingly advised me that Ms Ross had obtained the shock collar from Mr Jimmy Black.
21. It was only through Mr Mitchell's disclosure that I was able to determine the background to Ms Ross having the shock collars as she had repeatedly refused to answer my questions during my visit on 9 July.
22. I was then able to complete the investigation.

#### **CROSS EXAMINATION**

23. In response to questions put to him Mr Cruickshank said that "the inference is that if you have one (shock collar) on the property then you have used it". He was asked if a trainer is allowed to have one on the property and he said "not that he was aware of".
24. He was asked, in response to the recording of his meeting with Jimmy Black if that was the first time that he had spoken to Mr Black. He confirmed that it was.

#### **EVIDENCE OF M JANSEN:**

1. That is my full name. I am a licensed Veterinarian and Chief Veterinary Advisor to Greyhound Racing New Zealand (GRNZ).
2. I graduated from the Massey University School of Veterinary Science in 1970 with a Bachelor of Veterinary Science degree (BVSc).
3. I have been associated with greyhounds and Greyhound Racing since 1982 and was appointed Chief Veterinary Advisor to GRNZ in 2012.
4. I am currently on the GRNZ Welfare Committee which meets every 2 months. The Committee is chaired by Mr Jim Edwards, past president of the World Veterinary Association.
5. The Welfare Committee has representatives from the New Zealand Veterinary Association, National Animal Welfare Advisory Committee and the Society for the Prevention of Cruelty to Animals.
6. On 15 July 2020 I received an email request from Senior Racecourse Investigator, Andy Cruickshank to provide information on the use of shock collars on greyhounds by Licensed Trainers.
7. I provided a report to Mr Cruickshank later that day (PRODUCE EXHIBIT).

#### **EVIDENCE OF MR JAMES BLACK:**

1. That is my full name. I am a Licensed Owner Trainer under Greyhound Racing New Zealand Rules. I live in Rotorua.
2. I had previously spoken to Ms Shirley Ross about dealing with her greyhound "Sovereign Pride" that was biting the kennels and had left blood in its mouth.

3. I advised Ms Ross that I had used a shock collar on my hunting dogs and that helped control them.
4. I offered to lend the shock collar to Ms Ross and she agreed to try it.
5. On about 2 July 2020 I met with Mr Joe Kingsnorth at my home address. I gave him a shock collar and remote (PRO EXH) and a dummy collar (PRO EXH).
6. I have owned these devices for a couple of years having used them on my hunting dogs to stop them going after kiwi.
7. I explained and demonstrated how to use it. Mr Kingsnorth put the collar around his knee and I gave him a little shock to show that the shock collar works.
8. I did not know they were illegal under Greyhound Racing New Zealand Rules. I have not used the shock collar on any of my greyhounds and I kept it in my house.
9. I only became aware that they were illegal under the Rules when my daughter Marsha told me that they were after this investigation was started.

#### **CROSS EXAMINATION**

10. In response to questions put to him Mr Black confirmed that one collar was live and one was a dummy. He said that he used the live one on one or two occasions and then the dummy. He said that if by using it in that manner they think the dummy is real. He confirmed that he gave the collars to Mr Kingsnorth.
11. In response to further questions he confirmed in the photos that there was a remote with the collars. He said that reference to the 80 setting, he never altered it.
12. In response to a further question when asked why he gave Mr Kingsnorth both collars he said one was to teach the dog that there are consequences of its actions and the dummy was as a reminder to keep the dogs settled.
13. Mr Black was asked what other such items had Ms Ross tried and he said that she was a professional trainer and did not need other similar items.
14. Mr Black confirmed that Ms Ross was not very happy when he suggested the use of the shock collar. In response to a further question he said that Mr Kingsnorth came back after two weeks and said that she couldn't turn it on.

#### **EVIDENCE OF MS WENDY TOOMATH:**

1. That is my full name. I have an Owner Trainer Licence under Greyhound Racing New Zealand Rules. I live in Ohaupo.
2. On Thursday 9 July 2020 I was a kennelling Steward at the Waikato Greyhound Racing Club meeting at the Cambridge Raceway in Taylor Street, Cambridge.
3. The Racing Integrity Unit Chairman of Stewards was Ms Philippa Kinsey assisted by Mr Warwick Robinson.
4. At about 10am while I was assisting in kennelling the dogs for the meeting I saw Ms Shirley Ross put something on the greyhound "Sovereign Pride".
5. "Sovereign Pride" was due to race in Race 5 'The Clubhouse Sports Bar Sprint C2 375m'.
6. I wasn't sure what Ms Ross put on "Sovereign Pride" but was concerned enough that I advised Ms Kinsey that she may want to have a look.

#### **CROSS EXAMINATION**

7. In response to a question put to her Ms Toomath said that she had known Shirley Ross for about 12 years.
- In response to further questions Ms Toomath said she saw Ms Ross put the "Sovereign Pride" in the kennel and then put a collar on it. The collar was black and she said she didn't think anything of it to start off with. She said that Ms Ross was then walking another dog and then "Sovereign Pride (Buzz)" was barking its head off. She said that she asked the Vet if a shock collar was illegal and he said he didn't know and went to ask Phillipa Kinsey.
8. Ms Toomath was asked to look at the photos and she confirmed that the black collar was the collar she saw put on the dog and that there was a black box on the right hand side of the neck. She said she only saw the prongs when the collar was taken off the dog.
  9. Ms Toomath said that she was very familiar with "Buzz" and his issues and that he is a very naughty dog and has hurt himself while in the kennel.
- She said that she asked Phillipa Kinsey to come and look at the collar.

#### **EVIDENCE OF MR JOE KINGSNORTH:**

1. That is my full name. I am a Licensed Handler under Greyhound Racing New Zealand Rules. I live in Rotorua.

2. I know the Respondent, Ms Shirley Ross. I also know that she is a Licensed Trainer under Greyhound Racing New Zealand Rules.
3. I am aware that she has had issues with her greyhound "Sovereign Pride" hurting itself in the kennels.
4. I spoke to Mr Jimmy Black about "Sovereign Pride" injuring itself.
5. As a result of that conversation it was agreed that he would loan Ms Ross a shock collar.
6. On about 2 July 2020 I met Mr Black at his property in Rotorua.
7. He handed me two collars and a remote. One is a shock collar (REF EXH) and the other is a dummy collar (REF EXH).
8. Mr Black demonstrated on my arm that it worked by giving me a zap.
9. On about 6 July I gave the collars to Ms Shirley Ross. They were in a plastic bag.
10. I did not show her how to use them as I know that she knows how to use them.
11. Her father is one of the first inventors of the shock collar in New Zealand.

#### **CROSS EXAMINATION**

12. In response to questions Mr Kingsnorth confirmed that both collars were given back to Jimmy Black. Mr Kingsnorth said that he subsequently picked them up on 3 July and gave them back to Ms Ross on 6 July.
13. In response to a further question Mr Kingsnorth said that in his opinion Greyhounds are working dogs.  
He said that he gave the working collar and the dummy collar in the same bag to Ms Ross but he said that he knew he wouldn't use the working one. He said that he put the working one on his own arm and tested it and he got a small shock.
14. In response to a further question he said he has been helping Ms Ross on a Monday for many years and when asked if he had ever seen her hurt a dog he said no.

#### **EVIDENCE OF MS P KINSEY:**

1. That is my full name. I am a Stipendiary Steward employed by the Racing Integrity Unit.
2. On Thursday 9 July 2020 I was Chairman of Stewards at the Waikato Greyhound Racing Club meeting at the Cambridge Raceway in Taylor Street, Cambridge.
3. I was working with Stipendiary Steward, Mr Warwick Robinson.
4. At about 10am as the greyhounds were being kennelled for the days races I was contacted by Ms Wendy Toomath who is a kennelling steward.
5. She was concerned about the collar on the greyhound "Sovereign Pride".
6. "Sovereign Pride" was due to race in Race 5 'The Clubhouse Sports Bar Sprint C2 375m'. It is trained by the Respondent, Ms Shirley Ross.
7. I entered the kennel block and went over to inspect the greyhound. It was evident to me that the collar was a battery operated device with metal prongs pressing against the dogs neck (REF EXH).
8. I took photos and removed the collar from the dog and confiscated it (REF EXH).
9. I left the kennel block and showed the collar to Mr Robinson.
10. I then sent photos taken to the Chief Greyhound Steward for the Racing Integrity Unit, Mr Scott Wallis.
11. After discussions with Mr Wallis it was agreed that "Sovereign Pride" should be scratched from the meeting as electronic collars are prohibited.
12. I located Ms Ross in the carpark and explained we had removed the collar from "Sovereign Pride" and that the dog would be scratched from the meeting.
13. I entered the kennel block with Ms Ross and "Sovereign Pride" was removed.
14. I went to the Stewards room and set up recording device and had Ms Ross come up to interview her about the situation with myself and Mr Robinson present.
15. Ms Ross was adamant there was no issue as the device did not work. She went on to say on numerous occasions she would never use a shock collar on a dog and that she thought they were cruel.
16. It was explained to Ms Ross that electronic collars are prohibited and our concerns that if the dog was trained at home with an electronic collar then having a dummy collar on would have the same affect.

17. If the dog had not been subject to the use of an electronic collar then putting a 'dummy' collar on would be of no relevance to the dog.
18. I then spoke to Ms Toomath who had escorted "Sovereign Pride" to the kennel. She advised that she saw Ms Ross put something on the dog but was unsure what.
19. She stated that when she went back to kennel another dog in the same race/set of kennels and saw the device. She then contacted me.
20. Due to concerns that Ms Ross may have had the remote for the device in her car or dog trailer a search was undertaken with Ms Ross' consent. No remote was located. Throughout the search Ms Ross repeatedly stated that the collar did not work.
21. It was then decided that a visit to Ms Ross' property should be undertaken when she arrived home from the race meeting in order to try and locate the remote for the device before it was disposed of.
22. I arranged with Senior Racing Investigator, Mr Andy Cruickshank to be at Ms Ross' property when she returned from the race meeting.
23. We arrived at the property at about 5pm as Ms Ross arrived home.
24. Ms Ross was not at all happy to see us at her kennels. She was very uncooperative.
25. She admitted that there was an electronic collar on the property but refused to provide it or tell us where it was despite repeated warnings.
26. When it was clear Ms Ross was going to continue to be uncooperative and obstructive Mr Cruickshank advised her that he was turning on his voice recorder.
27. We then commenced a search of her kennels, starting with a cupboard that she had directed us to.
28. Ms Ross was directed several times by Mr Cruickshank and myself to provide the shock collar and tell us who had given it to her but she refused.
29. After about 10 minutes Ms Ross agreed to show us the shock collar.
30. The device was sitting out in the open on a set of draws partially covered by a plastic bag. I took photos of the collar and its location (PRO EXH).
31. There were two parts to the device. The collar and a remote. The remote was on and was set to 80/100. I assumed this to be 80 percent power.
32. Ms Ross stated that she was only given the collars last week but refused to state who had given her the collars or whether they were a licensed person. Again, she was warned that by refusing she was committing racing offences.
33. The collar and remote were seized.
34. At about 5.20pm we left the property.

#### **CROSS EXAMINATION**

35. Ms Kinsey said that in the interview with Ms Ross she was having trouble finding the relevant Rule and Stipendiary Steward Mr Warwick Robinson was sent down with the relevant Rule. It was 4.6 of the Greyhound New Zealand Health and Welfare Standards. Ms Kinsey was asked about her statement that you cannot have the shock collars on your property. She was asked where it said that in the Rules but she was not sure.

#### **EVIDENCE OF MR A MUNCASTER:**

I, Allan Russell Muncaster (known as Russell), retired, of Whakatane say –

1. I have known Shirley Ross for many years, since approximately the 1980s when I was a top public trainer for greyhounds.
2. I held a Trainer's Licence for many years, but retired from training greyhounds in or around the late 1990s. I had a very successful career racing dogs, and a completely clean record.
3. I have also practised as an animal chiropractor for over 50 years. I still occasionally do alignment work on dogs, including greyhounds.
4. I am the owner of Sovereign Pride ("Buzz") who Shirley trains for me. She has previously trained other dogs for me, and I think very highly of her both personally and as a Trainer. Her dogs always come first, and she holds herself to the highest standards.
5. "Buzz" has been a problem to train since the beginning. He has always played up in the kennel block, chewing the metal doors, making himself bleed, hitting his tail which caused it to break and the end had to be removed. Shirley would speak to me about the

issues she was having. She tried lots of different methods to calm him down, including spending hundreds of dollars on acupuncture and homeopathy.

6. Sometime ago, last year I think, I suggested to Shirley that she tried a shock collar. I used to run a sheep station with thousands of sheep and have previously used shock collars on my sheep dogs. Used correctly, I think that they can be an effective training tool. However, when I suggested it to Shirley, she bit my head off. She told me she would not use one as she once knew a bloke once who had used them and turned his dog savage.

7. I am extremely upset with the way Shirley has been treated, and as a result Shirley, myself and the dogs are all being penalised.

### **CROSS EXAMINATION**

8. In response to a question put to him Mr Muncaster said there was nothing wrong with a shock collar and it was only a training device. He said that the Department of Conservation uses them to stop dogs chasing Kiwis. He said he used it on farm dogs but not on Greyhounds.

9. He further said that the collars were old and that modern collars don't have the prongs that were on the collars that came from Jimmy Black. He said he didn't have a problem using a shock collar on a dog if it was used properly. He further said that Ms Ross used the dummy collar on "Buzz" and it worked.

10. In answer to a further question Mr Muncaster said he was aware that the use of aversive devices is prohibited and he said that it came in recently.

### **EVIDENCE OF MS S L ROSS:**

I, Shirley Loraine Ross, Licensed owner trainer under the Greyhound Racing New Zealand Rules of Horotiu, say –

1. I have been training and racing greyhounds for over 30 years.

2. In the past I have held a Public Trainer Licence, and an Owner Trainer's Licence. I have successfully bred a number of puppies using a stud dog imported from Ireland. Working with greyhounds has been a huge part of my life, particularly over the past three decades, and they are my only source of income (aside from the pension). I am currently 74 years old.

3. In 1993, my partner Chris and I were in a serious car accident. It took three hours for them to cut me out of the wreckage. I suffered a massive head injury and was in an induced coma in Waikato Hospital for over a month. Since then, I have had a number of surgeries on my face to try and repair some of the physical damage.

4. As a result of the head injury, I have since struggled with some tasks, including reading.

5. In 2000, I was fined and suspended for using a banned substance on my dogs. The substance was previously allowed, and I was unaware of a Rule change prohibiting its use.

### **Sovereign Pride**

6. In or about October 2018 I received Sovereign Pride ("Buzz") for training. He is owned by Russell Muncaster. "Buzz" had been broken in by Rosemary Blackburn in Christchurch.

7. While "Buzz" is a lovely dog, he has been difficult to train. He has been very late maturing and has had a lot of problems settling in a controlled situation. He has not been able to be kennelled except for feeding, as he stresses out and works himself into a frenzy.

8. Therefore, on race days he struggles with the kennel environment, gets very worked up, and barks continuously. He has broken his tail while being kennelled and has smashed the plastic barking muzzles and caused himself to bleed.

9. I have tried a number of different methods with Buzz to try and calm him down:

(a) Pacifier;

(b) Blind fold;

(c) Barking muzzle.

10. I have also taken him for a number of acupuncture and homeopathy appointments.

11. "Buzz" also gets very worked up in the boxes and has turned out on occasions. My friend, Jimmy Black, has occasionally helped me to handle him and was aware of the struggles I was having with the dog.

### **The Shock Collar**

12. It was Jimmy who suggested to me that I try a shock collar. I have never before used a shock collar, and although I am familiar with what they do I do not like the idea of them and have never, in my whole greyhound career, resorted to using one.

13. Some years ago, a guy I knew asked me to have a look at his dog as he was having issues with it. I am often approached for advice and help by other owners and trainers, and I was happy to help and check the dog's alignment. The dog was savage. I asked him what on earth he had done to make the dog so savage. He said that he had been using a shock collar. So, while I know that people use them in some cases, I have always disliked the idea of them.

14. I told Jimmy that I did not like the idea, but he said he had one I could borrow and I could take it and think about it.

15. Jimmy lives in Rotorua. At the races on Thursday, 25 June 2020 Jimmy gave me a plastic bag. He told me that it had an electric collar in there and that he had thrown a broken collar in there too, which I could use as a dummy collar.

16. I took the collars home and looked at them. I turned on the remote for the working one and tried it out on my hand. I could not get it to do anything. At the races the next week I gave the bag back to Jimmy and said I had no idea how to use it and it was no good to me.

17. I understand that my friend Joe Kingsnorth got the collars back from Jimmy the following day.

18. Joe gave the collars to me on the following Monday (6 July) as he comes up to Hamilton on Mondays to help me train the dogs. He gave me the plastic bag and I think he said something like "there's a switch on the back of the collar that you need to press to make it work". He didn't show me how to use the collar.

19. I was still really unsure about using an electronic collar. I had a look at the collars again and decided that I would try using the broken (dummy) collar on "Buzz". I put the bag with the working one, its remote, and charger on the top of a set of drawers in my garage where the dogs sleep. I did not touch the working collar again and it remained there until removed by the RIU on 9 July.

20. I used the dummy collar for the first time on the Monday, 6 July when I got home from training the dogs. I put Buzz in his kennel with the collar on firmly. He barked a couple of times and then stopped and whined a bit. I told him to stop whining and he settled. I left the collar on for half an hour to an hour at most.

21. The next morning, I put the collar on "Buzz" again. He did not bark once, and just whined a few times. I left the collar on him for about half an hour.

22. On Wednesday morning (8 July) I decided to try it on him for a ride in the ute, as he normally barks a lot while in the ute. I put the collar on him and took him for a drive and he did not bark once.

23. I was really encouraged by the results with using the dummy collar and thought it would be a great way to keep "Buzz" calm and quiet in the kennels at the races.

### **9 July 2020**

24. On 9 July 2020, I was at Cambridge Raceway for the meet that day. I had four dogs set to race. When I took Buzz into the kennels, Ms Wendy Toomath, the Kennel Steward, was there. I spoke to her briefly, and in front of her I put the dummy collar on to Buzz, hoping that it would have the same effect on him there as it had at home.

25. I think it was about ten minutes later that Philippa Kinsey came out to see me and tell me that Buzz was being scratched from the race.

26. I then attended the Stewards room for an interview with Ms Kinsey and Warwick Robinson. During the interview, Ms Kinsey told me that shock collars were prohibited, and that I was not allowed to even have them on my property.

27. Although I did not know that electronic collars were banned, I repeatedly told her I had not used a working collar in any event.

28. After the interview, we went down to the car park and Ms Kinsey went through my ute, in front of everyone.

29. When I got home, around 5pm that evening, Ms Kinsey and Mr Cruickshank were waiting for me. I tried to tell them both time and time again that I had never used a working shock collar, but they appeared to not believe me and kept on and on.

30. I became really stressed and felt under attack. I could hardly get my words out and was being talked over the top of. I was told that I would lose my licence and that made me even more stressed, however I did not want to get my friend, who was only trying to help me, in trouble. I therefore made up some silly lies to try and protect Jimmy, and while under stress and feeling under attack, made some poor decisions about how to handle the situation.

### **Concluding remarks**

31. I am extremely regretful for my actions. Firstly, I did not know that electronic collars had been banned – had I known that I would never have risked even using a dummy one, as my Licence is my livelihood. Secondly, I regret not being completely open and honest with the RIU regarding the location of the working collar and who I had obtained it from. I put my friend's needs and reputation before my own and I am the dummy one, as my Licence is my livelihood and now I am paying the price.

32. I realise that it is my own obligation to read and understand the Rules from cover to cover. I struggle with reading, and have never taken the time to read all of the new Rules, thinking that as I always have my greyhounds' interests at heart that nothing I could do would be detrimental to them.

33. The income I earn from training and racing greyhounds is my main source of income (aside from the pension). In addition to the stop of racing during Level 4 lockdown, I have now lost another 8 weeks of income from racing as a result of the RIU charges. The dogs (and their owners) are also being penalised as they cannot race until this matter is resolved.

## CROSS EXAMINATION

34. It was put to Ms Ross that she was far from honest with the RIU. She said she admits that, and it was because she didn't own the collars and didn't want to give away something that wasn't hers.

35. Ms Ross was then asked that if she truly believed that the collars were not illegal then why not tell the RIU? She said that she hadn't read the Rules properly.

36. In answer to a further question she said that she got the two collars but she didn't know how to work them and this included the working one.

37. Ms Ross said that she was unaware of the Rules and the entry in the Health and Welfare Standards manual and she said that she doesn't read very well but she had since read it.

38. Ms Ross said that she admitted that she did tell the RIU Investigator and Stipendiary Steward a number of lies when they were at the property.

## SUBMISSIONS BY N WEBBY

### 1. Background

1.1 The Respondent Shirley Lorraine Ross (**Respondent**) has been charged with the following:

(a) Doing an act detrimental to the interests of greyhound racing - **Information A8716**;

(b) Obstruction – **Information A8717**:

On the 9th day of July 2020, at 158 Park Road, Horotiu did obstruct a Racing Integrity Unit Official, who was undertaking an investigation into the use of an electronic aversion device, by refusing to answer questions related to the investigation thereby committing a breach of Rule 62.1 (g) of the New Zealand Rules of Greyhound Racing AND IS therefore liable to the penalty or penalties which may be imposed pursuant to Rule 63.1 of the said Rules.

(c) Failing to comply with a directive - **Information A8718**:

On the 9th day of July 2020, at 158 Park Road, Horotiu did fail to comply with the lawful order of a Racing Integrity Unit Official, by refusing to state the location of or provide to Officials all electronic aversion devices held on the property thereby committing a breach of Rule 62.1 (p) of the New Zealand Rules of Greyhound Racing AND IS therefore liable to the penalty or penalties which may be imposed pursuant to Rule 63.1 of the said Rules.

(d) Making a false statement - **Information A8719**:

On the 9th day of July 2020, at 158 Park Road, Horotiu did make a statement which was known to be false to a Racecourse Investigator in the execution of his duty thereby committing a breach of Rule 62.1 (w) of the New Zealand Rules of Greyhound Racing AND IS therefore liable to the penalty or penalties which may be imposed pursuant to Rule 63.1 of the said Rules.

1.2 By email (Email from Jessica Gilby-Todd dated 17 August 2020) Counsel for the Respondent confirmed that the Respondent will admit the charges contained in **Informations A8717, A8718 and A8719** (above) at the scheduled hearing on 7 September 2020.

1.3 This leaves only **Information A8716** to be determined at this hearing.

1.4 **Information A8716** (Charge Rule and Penalty Provisions) alleges:

On the 9th day of July 2020, at the Waikato Greyhound Racing Club meeting, Cambridge Raceway, Taylor Street Cambridge did an act detrimental to the interests and welfare of greyhound racing by using a dummy electronic aversion device (shock collar), in breach of New Zealand Greyhound Racing Health and Welfare Standards thereby committing a breach of Rule 62.1(q) AND IS therefore liable to the penalty of penalties that may be imposed pursuant to Rule 63.1 of the said Rules.

1.5 The penalty (Rule 63.1 of New Zealand Rules of Greyhound Racing (**the Rules**)) for the charge(s) are:

(a) a fine not exceeding \$10,000 for any one ...; and/or

(b) Suspension; and/or

(c) Disqualification; and/or

(d) Warning Off.

## **New Zealand Greyhound Racing Health and Welfare Standards**

1.6 The purpose of the *New Zealand Greyhound Racing Health and Welfare Standards (the Standards)* is that: (Effective 1 August 2018)

**These GRNZ Health and Welfare Standards specify the duty of care required to meet the physical, health and behavioural needs of greyhounds under the jurisdiction of GRNZ.** This document supplements the Animal Welfare (Dogs) Code of Welfare, which is applicable to ALL dogs in New Zealand and must be read and adhered to in conjunction with these GRNZ specific standards.

1.7 The Standards apply to:

... **[A]ll persons licensed by GRNZ, according to the Rules of Racing, who are responsible for the welfare of GRNZ registered greyhounds** through to, but not including, the rehomed greyhounds after their retirement from all GRNZ activities.

1.8 The Standards also apply to:

... **[A]ll greyhounds registered according to the Rules of Racing and/or kept by persons licensed by GRNZ.** This includes puppies and young greyhounds not yet registered as racing greyhounds and those kept for breeding.

1.9 Failure to meet these standards:

...[M]ay be used as evidence to support a charge for an offence under the GRNZ Rules of Racing and possibly the Animal Welfare Act and associated regulations.

## **Equipment, Training and Training Devices**

1.10 Paragraph 4.6 of the Standards explicitly provides:

The use of aversive electronic training devices is prohibited.

## **New Zealand Rules of Greyhound Racing**

1.11 Rule 62.1(q) of the Rules provides:

*62.1 Any person (including an Official) commits an offence if he/she:*

...

*(q) commits or omits to do any act or engages in conduct which is in any way detrimental or prejudicial to the interest, welfare, image, control or promotion of Greyhound racing.*

1.12 This memorandum is filed to assist the Committee by outlining the issues to be determined and the relevant evidence to be called.

## **2 Issues for hearing**

2.1 The elements of this offence are (for the purpose of this case):

(a) The Respondent has done an act in breach of the Standards (using a dummy electronic aversion device (shock collar), and

(b) That act (in breach of the Standards) is detrimental to the interest and welfare of Greyhound racing.

2.2 The term “detrimental” is not defined in the Rules. The RIU submits it should be given its natural and ordinary meaning, namely “tending to cause harm”.

2.3 The RIU must prove each of these elements on the balance of probabilities (Rule 1008A of Rules and Rule 31.1 of the Rules of Practice and Procedure for the Judicial Committee and Appeals Tribunal (JCA Rules)).

2.4 Of particular relevance to these proceedings, in *RIU v Dixon* (*RIU v Dixon* (31 July 2019)) the Judicial Committee recently stated:

The onus is on trainers at all times to be aware of the Rules, the need to maintain a standard that is beyond reproach and that any actions are not detrimental to the interests of Harness Racing.

## **3 Evidence**

### **Evidence to be led in this case**

3.1 The RIU intends to rely on the evidence of the following witnesses to demonstrate that the respondent was in possession of, and used, a dummy electronic aversion device (shock collar), such use being prohibited by the Standards and detrimental to the interest and welfare of greyhound racing:

- (a) Dr Jansen Wendy Toomath;
- (b) Phillipa Kinsey;
- (c) Andy Cruickshank;
- (d) James Black;
- (e) Joe Kingsnorth; and
- (f) Dr Malcolm Jansen.

#### **4 Penalty and costs if Information is made out**

4.1 Should the Committee find the Information proven, the Informant will seek a penalty of disqualification (**in the region of 36 months** (as a starting point)) and legal costs.

4.2 In the very recent penalty decision of *RIU v MD Beeson* (*RIU v MD Beeson* (3 September 2020)) the Judicial Committee stated as a general principal:

10. Failing to comply with GRNZ Rules and Policies must be viewed seriously and any penalty must act as a deterrent for others.

4.3 Many of the aggravating factors and principles referred to in *RIU v McGrath* (*RIU v McGrath* (3 July 2020)) are equally applicable to the present case. As in *McGrath*, conduct such as the Respondent's, has a significant impact on the racing industry's reputation for high standards of animal welfare. The industry cannot maintain its social licence in order to continue to operate without maintaining high standards of animal welfare. (At [106]).

4.4 It is submitted that the Respondent's (admitted) actions in obstructing the investigation (by refusing to answer questions about the whereabouts of an electronic aversion device); failing to comply with a directive (regarding the location of the device) and making a false statement (about the device and where it was obtained) must be regarded as seriously aggravating factors of the offending.

4.5 As in *RIU v McGrath*, "intentional, aggressive and obstructive conduct" (At [131]) when dealing with racecourse investigators warrants a condign response": (At [107])

[110] Mr McGrath knew that as a licenced trainer that the Rules of Harness Racing requires compliance with the horse Rules and cooperation with the RIU, the industry body charged with managing integrity issues. It is also important that all those in the industry are also deterred from acting in a similar way, contrary to the conditions of their licences and the Rules.

[131] ... [I]ntentional aggressive and obstructive conduct undermined the Rules and the licensing regime and rendered the RIU investigation redundant in that they were unable to perform their core functions. **If the industry cannot be effectively regulated, there are serious consequences of public confidence in the sport. In our view, disqualification is the appropriate penalty** [Emphasis added].

[132] ... **[L]icence Holders must not be given the impression that they can withhold or destroy evidence...**

4.6 Therefore the RIU submits that the starting point for the four offences, before allowance is made for mitigating factors, must be sufficient to reflect the gravity of the offending, the interests of the industry, the profession of greyhound racing as a whole and the need for both general and specific deterrence.

4.7 A starting point of at least **36 months disqualification** (when compared to *McGrath* and a starting point of 10 years disqualification) could not be regarded as manifestly excessive.

4.8 The RIU acknowledges that mitigating factors such as:

- (a) guilty plea(s) to three of the charges; and
- (b) previous good character

will be matters the Committee will have regard to.

#### **SUBMISSIONS BY J K GILBY-TODD**

1. Ms Ross has been charged with four separate breaches of the New Zealand Greyhound Racing Rules (Rules).
2. She has admitted charges under information numbers A8717, A8718 and A8719. She defends the charge under A8716.
3. Accordingly, it is submitted that there are two parts to the Committee's enquiry. Firstly, to establish whether or not charge A8716 has been proved, and secondly to deal with sentencing on the charges which have been admitted (and/or proved).

#### **Information A8716**

4. Charge A8716 is as follows:

THAT on the 9th day of July 2020, at the Waikato Greyhound Racing Club meeting, Cambridge Raceway, Taylor Street Cambridge did an act detrimental to the interests and welfare of greyhound racing by using a dummy electronic aversion device (shock collar), in breach of New Zealand Greyhound Racing Health and Welfare Standards thereby committing a breach of Rule 62.1(q) AND IS therefore liable to the penalty of penalties that may be imposed pursuant to Rule 63.1 of the said Rules.

5. It is submitted that the charge must be considered in two parts:

(a) Was using a dummy electronic collar in breach of the Health and Welfare Standards?; and

(b) If the answer to (a) is yes, then is that a breach of 62.1(q)?

6. It is submitted that if the answer to (a) is no, then the enquiry stops there because the charge has been laid on the basis that the use of a dummy collar is in breach of the Rules.

7. Alternatively, it is submitted that the use of a dummy electronic collar in the circumstances in which it was used was not in breach of the 62.1(q) as it was used in circumstances which would not be “detrimental or prejudicial to the interest, welfare, image, control or promotion of Greyhound racing”.

#### **Use of the dummy collar**

8. The Health and Welfare Standards (Standards), at section 4, provide:

4 Equipment, Training and Training Devices

4.6 The use of aversive electronic training devices is strictly prohibited.

9. Ms Ross does not deny using the dummy electronic collar. However, it is submitted that the use of a broken or dummy electronic collar, with nothing further, cannot be a breach of clause 4.6. It is submitted that for a device to be “electronic” it must actually be capable of some electronic function. That is, the ability to deliver a noise, vibration or shock. The Animal Welfare (Dogs) Code of Welfare 2010 (Issued pursuant to the Animal Welfare Act 1999) identifies electronic collars as covering both transmission devices and bark-activated devices.

10. The device in question was a transmission device but there was no remote to effect transmission. Further, even if there was a remote it was incapable of delivering a noise, vibration or shock, because:

(a) It had dead batteries inside it; and

(b) Had been assessed by an electronics dealer who confirmed that it could never be repaired or made to work again. (Evidence of Joe Kingsnorth)

11. The use of a non-electronic collar is not a breach of 4.6, therefore no breach of the Rules has occurred and the charge has therefore not been proven.

12. It is submitted that whether or not Ms Ross had ever used an electronic collar is in fact irrelevant in terms of the charge that has been laid. However, in any event the evidence does not support (even if allowed) a finding that an electronic collar has been previously used by Ms Ross.

13. While Ms Ross undoubtedly told some untruths during the course of the RIU’s investigation on 9 July, she was steadfast in her explanation regarding the use of the dummy collar in both interviews. In summary:

(a) Ms Ross explained to Ms Kinsey that she had used the dummy collar three times at home and that it had stopped the dog from barking; and

(b) Ms Ross told Mr Cruickshank repeatedly that she had used the dummy collar three times only and had never used an electronic collar.

14. Ms Ross’ sworn evidence elaborates on the circumstances of the three occasions on which she used the dummy collar, and that it appeared to be having a positive effect. (Paragraphs 20-23, Brief of Evidence of Shirley Ross). Albeit, those instances were in controlled environments at home and in Ms Ross’ vehicle.

15. The evidence of the Kennel Steward, Ms Wendy Toomath, is that the dog SOVEREIGN PRIDE (“Buzz”), was barking in the kennels on the day in question. She is familiar with the dog and recalled him barking and telling him to be quiet. Therefore it is submitted that the dummy collar was not having any psychological effect on the dog, which is sufficient to rebut any suggestion (and that is all that can be the case) that he had in fact been previously subjected to a working electronic collar.

#### **Detriment to the Interests and Welfare of Greyhound Racing**

16. In the event that the Committee finds that use of the dummy collar is a breach of the Standards (denied), the third element is considered.

17. Rule 62.1(q) provides:

Any person (including an Official) commits an offence if he/she:

(q) commits or omits to do any act or engages in any conduct which is in any way detrimental or prejudicial to the interest, welfare, image, control or promotion of Greyhound racing.

18. I have been unable to locate any fact-similar cases on the JCA website where this charge arises. Indeed, there is a discrete charge available for breach of the Welfare Code (rule 84) which is a strong indicator that where the appropriate remedy is to be found. Cases under 62.1(q) appear to largely apply where there is some element of public exposure which would be viewed negatively by the general public and which could accordingly harm the industry.

19. In *RIU v P Taylor* 10 February 2015, Mr Taylor smacked the dog across the head on the way to the start line of the race and was charged under Rule 88.1(q) (now 62.1(q)). The incident was in a public place but it “was fortuitous that the incident was not seen across the Trackside network”. The Committee held that:

in addition to the animal welfare aspect of this matter, the Committee needs to have regard as always to the integrity of Greyhound Racing and the need to protect it.

Mr Taylor was fined \$250.

20. In *RIU v Lowen* 28 July 2017, Mr Lowen was holding his mobile phone and looked at it briefly in a manner which was in breach of the mobile phone policy. Breaches of that policy may be brought by way of charge pursuant to Rule 62.1(q). The use of the phone was very low-end offending, but the Committee commented:

Nonetheless... the public and trackside viewers would have seen Mr Lowen, phone in hand, with the dogs, behind the boxes.

Mr Lowen was fined \$200.

21. In *RIU v McInerney* 4 January 2016, the mobile phone offending was higher end as Mr McInerney answered his phone in full view of the public and Trackside viewers. He was fined \$300.

22. In *RIU v B Goldsack and R Goldsack* 2 August 2019, a dog was left in the back of a ute on a hot day with a barking muzzle on. The dog was found unsupervised, distressed and unable to pant and drink properly. The Goldsacks were charged with breach of the Welfare Code and for negligent behaviour (Rule 62.1(o)). The lack of constant supervision of the dog while wearing the barking muzzle was a breach of the Welfare Code and therefore the Rules and deemed to have been negligent. The trainer was fined \$1,800 and the handler fined \$750.

23. This case resulted in a distressed dog and was found to be in breach of the welfare code. If that sort of behaviour had been exposed to the public, it is submitted that it would be much worse for the industry than the present situation where there has been no evidence of any distress caused to Ms Ross' dog. But despite that level of animal welfare breach, it was not raised to the level justifying a charge under 62.1(q). This reinforces the earlier submission that animal welfare issues should be dealt with under the specific Rules dealing with that conduct.

24. In *RIU v McInerney & Armstrong* 4 September 2018, 5 dogs died in the back of a van while being transported across the Cook Strait due to inadequate ventilation in the hot vehicle. The Committee held:

[98] The penalty we impose has to mark the seriousness of the breaches, uphold the reputation of the greyhound industry, and hold the respondents accountable for their actions / omissions. The deaths and thus loss of the dogs, in itself, is a clear deterrent and there is less of a need for us to place emphasis on this purpose of sentencing. The adverse publicity for Mr McInerney is a further factor to consider, as is the tarnish to his good reputation.

25. Mr Armstrong was the driver and not licenced or involved in greyhound racing and was fined \$1,000. Mr McInerney was fined \$2,500 for a breach of the Welfare Code and \$2,500 for a breach of rule 62.1(q).

26. It is submitted that where there has been a breach of the welfare code, then in many cases that may be detrimental to the interests, welfare and image of the Greyhound Racing Industry, however that will depend on the facts of the case.

27. It is submitted that the public view cannot be said to be totally against the use of electronic collars (let alone dummy ones). In support of that, judicial notice can be taken of dog lovers throughout New Zealand who use them. In addition, they are even used by DOC for the purposes of aversion training to protect New Zealand's native species. (<https://www.newshub.co.nz/home/new-zealand/2020/07/spca-calls-for-ban-on-use-of-shock-collars-after-being-used-in-aversion-training.html>)

The SPCA considers such collars should be banned totally, but that body clearly does not represent the view of the “public”. On the other hand, it is submitted that the public would without doubt condemn the actions of the Goldsacks.

28. Ms Ross placed the collar on the dog in the kennels and in front of the Kennel Steward. There was no duplicity in these actions, and as explained, Ms Ross had found the collar to be effective in calming the dog at home and hoped it would have the same effect in the kennels.

29. The collar did not cause any distress to the dog, and Ms Toomath confirmed that he was behaving as normal and barking.

30. The collar was removed by Ms Kinsey and confiscated, and Ms Ross was taken for interviewing.

31. It is submitted that there is no "public" element to this situation. Ms Ross used unpermitted gear (discussed later in my submissions) and it is submitted that a charge on that basis would have been much more appropriate.

32. If the Committee considers that the Rule applies nonetheless, it is submitted that Taylor is the most appropriate standard to apply, and a starting point of \$300 for a fine is appropriate.

### **Health and Welfare Standards**

33. It is submitted that there are also some background issues in relation to the Rules and the Standards which should be considered. The Standards were introduced in August 2018 in response to an independent inquiry. A special print run of the Constitution, Rules, the Animal Welfare (Dogs) Code of Welfare and the Standards was arranged and a bound folder was distributed amongst Licenced Persons and members. (Email exchange with Michael Dore, GRNZ). It was clearly anticipated, as at March 2018, that the Rules would be updated to reflect reference to the new Standards as a replacement document for the Welfare Code. (Extract from minutes of the GRNZ Board Meeting 20 March 2018). This did not occur. Further, it was anticipated that education updates would be advertised with key messages being sent out. (Extract from minutes of the GRNZ Board meeting May 2018). There is no evidence to suggest that occurred either, and certainly not in respect of the new prohibition of the use of aversive electronic devices.

34. The Rules state:

Rule 5.1(c): *The Board shall have the power "to promulgate, implement and uphold the Welfare Code relating to the safety and welfare of Greyhounds";*

Rule 84: *A Licenced Person shall at all times comply with the Welfare Code.*

35. The Welfare Code is defined by the Rules as:

**Welfare Code** means the Animal Welfare (Racing Industry Greyhounds) Code of Welfare 2013, promulgated by the Board pursuant to Rule 5.1(c) as updated from time to time.

36. That document, or a document called a "Welfare Code" is not found anywhere in the bound folder provided to members.

37. It is submitted that a reasonable person, reading the Rules, would, for example, Google the "Animal Welfare (Racing Industry Greyhounds) Code of Welfare 2013". On doing so, one is taken directly to a document on the GRNZ website described as the Welfare Code updated March 2016. (<https://www.grnz.co.nz/Files/Documents/Code%20of%20Welfare%20updated%20March%202016.pdf>) That document provides:

#### **11.1 Aids for Behavioural Modification**

##### **Introduction:**

A range of devices are available to assist training and modify behaviour. These include choke chains, prong or pinch collars, electronic collars (remote transmission and bark-activated), electronic boundary control devices and muzzles. Training devices, especially electronic devices, have the potential for misuse and abuse. If used incorrectly, they can significantly reduce the long term welfare of a dog. They should only be used by competent operators as a training aid for serious behavioural faults when other methods have proved ineffective, and when, without the use of such a device, the dog is likely to be euthanased.

##### **Animal Welfare (Dogs) Code of Welfare 2010 Minimum Standard No. 19 - Aids for Behavioural Modification**

(a) Training aids, including electronic training devices, must not be used in a way that causes unreasonable or unnecessary pain or distress to the dog.

(b) Pinch or prong collars must not be used.

(c) Muzzles must fit comfortably without chafing the skin or impeding breathing and must allow the dog to open its mouth sufficiently to enable panting or drinking.

38. Further, looking at the bound folder there is a tab labelled "NZ Dog Code" immediately following the tab containing the Rules. The document is titled the Animal Welfare (Dogs) Code of Welfare 2010, subtitled "a code of welfare issued under the Animal Welfare Act 1999". Pages 34 and 35 of this code contains 8.1 "Aids for Behavioural Modification". The section is essentially replicated by the GRNZ 2016 Welfare Code, and clearly allows for the use of electronic training devices and sets out best practice.

39. The Rules provide:

**85.6** *A Licenced Person must at all times comply with the provisions of the Dog Control Act 1996 and the Animal Welfare Act 1999.*

40. The Standards are not referred to in the Rules. Further, aside from the fact that they are sitting in the bound folder, there is nothing in print to identify that they are the new "Welfare Code".

41. It is submitted that:

(a) It is not entirely clear that the Standards are the Welfare Code;

(b) There is a requirement to comply with the Animal Welfare Act and that Act allows for the use of electronic training devices; and

(c) Where there are inconsistencies between the two, it is submitted that:

(i) The Standards are "supplementary" only to the Act; (See page 5 of the Standards)

(ii) The Act should take precedence; and/or

(iii) There should be clear identification and education where there are inconsistencies which GRNZ wishes to override through its own policies (if in fact it can do that).

42. The evidence has shown that a number of people, including the Kennel Steward and the veterinarian on the day of the incident in question, were not clear as to whether or not electronic collars were prohibited. Ms Ross did not know that they were.

43. While it is accepted that ignorance is no excuse, it is respectfully submitted that Ms Ross (and others) not knowing this to be the case is entirely reasonable given the confusing and contradictory documents found in the folder, and the way in which the Standards were "introduced". It is completely unclear why, for example, they are not just called the Welfare Code.

44. While Ms Ross did not use a working electronic collar, it is further submitted that if it was clear that electronic collars were prohibited, Ms Ross would never have:

(a) Considered the use of one;

(b) Accepted the loan of collars from Jimmy Black; and/or

(c) Used the dummy collar either in private or at the races.

#### **Admitted charges**

45. Ms Ross admits the balance of the charges against her.

46. It is submitted that the actions giving rise to the charges must all be considered in light of the evidence which preceded Ms Ross' actions.

(a) There was no duplicitousness in Ms Ross' actions regarding the use of the dummy electronic collar – it was placed on the dog in view of Ms Toomath under the mistaken impression that there was nothing wrong with using it and it would in fact keep the dog calmer than usual and hopefully prevent injuries;

(b) The collar did not cause any obvious distress to the dog;

(c) On being advised that the dog had been scratched Ms Ross willingly attended the Stewards' room for an interview. A number of things were said during that interview which, it is submitted, can be attributed in part to events which followed later. The transcript records that very early on in the interview, Ms Kinsey states to Ms Ross:

PK Okay, you are aware they are completely prohibited, you're not even allowed them on your property?

SR I've never known that they're illegal. (Page 2, Stewards Interview)

(d) Ms Kinsey repeated again, later in the transcript:

PK Regardless of that, they're illegal to have, you're not even allowed them on your property. (Page 3, Stewards Interview)

(e) Ms Kinsey also explained that regardless of whether or not the collar was working, "if you're using it to stop the dog barking that's breaching the Rules, by having gear that's not actually approved". (Page 3, Stewards Interview)

(f) Later in the interview, Warwick Robinson asked Ms Ross who gave her the collar. (Page 6, Stewards Interview). The transcript records:

SR Do I have to... him?

WR ... I'm just asking

SR ... not really do I.

WR If you've got a problem with it no. (Page 7, Stewards Interview)

(g) The interview concludes as follows:

PK And what we'll do, we'll just leave it as adjourned today, we won't go anywhere today. And then we'll be in touch, probably at the next race meeting which will be next Thursday. You'll be here next Thursday? (Page 9, Stewards Interview)

(h) However, matters were not left there and Ms Ross was surprised to find Mr Cruickshank and Ms Kinsey at her property on her return home from the races. During that interview, the transcript records:

AC you're not allowed shock collars on your property, as a trainer.

SR Well I didn't know that.

AC Well you do now.

...

SR Given to me a week ago.

AC It doesn't matter how you got it. (Page 7, RIU Interview)

...

AC So who gave you this?

SR Well no that's, that's, you can't do that to me.

AC I can and I did.

SR Well you know, that's, that's not very fair asking me who gave it to him, to, no that's unfair. (Page 10, RIU Interview)

...

AC If this person is involved in the Greyhound Racing Industry and they are doing this then they are in breach of the Rules and they are encouraging you to do, you can imagine if this got in the media, the damage it would do to greyhound racing. Greyhound racing at the moment is barely surviving, for a number of reasons. If this person is doing it and you're going to protect them you're as guilty as they are.

...

AC your response could be the difference between you staying as a Licensed Trainer.

...

SR you can take my licence for that matter. I am not going to dob people in. I don't think that's fair. No I can't do that. (Page 12, RIU Interview)

47. Further, Mr Cruickshank effectively threatened Ms Ross' licence on at least 5 occasions during the course of the interview. The key passages are:

AC where are these shock collars that you've got Shirley? If you don't provide them, the path we can do down is a show cause hearing, to say why, in which case you need to show Greyhound Racing why you should be licensed. (Page 3, RIU Interview)

...

AC The option's up to you. If you want to be involved in the game of greyhound training. (Page 4, RIU Interview)

...

AC The problem you've got is if we walk away from here and these shock collars are still here, then no licensing body's ever going to permit you to race. Probably ever again. If you give them to us you've got a chance. But that's your call. (Page 5, RIU Interview)

...

AC Your response to that could be the difference between you staying as a Licenced Trainer. (Page 12, RIU Interview)

...

AC I think you need to think long and hard about some of the choice you're making at this moment. If you want to continue playing in the Greyhound Racing.

48. It is submitted that during the course of the two interviews, Ms Ross was given conflicting and incorrect information by both the Stewards and the RIU investigator:

(a) It is not illegal or in breach of the Rules to have a working electronic collars on one's property. There is absolutely nothing in the Rules to indicate that to be the case. Ms Ross had already explained that she was unaware that electronic collars were prohibited but in any event she had not used one. At that point, it is submitted she would not have been overly concerned as she had not used a

working collar so to have a working one in her possession was neither here nor there. However, on being told that to have one on her property was a breach of the Rules, it is submitted would have caused significant concern to Ms Ross which may have caused her to lie and be obstructive upon inspection of her property. Further, it is submitted that Mr Cruickshank's repeated threats to her Licence were inappropriate and left Ms Ross in a position where she felt as though that was now an inevitable outcome - so she was left with only protecting her friend's Licence instead. Had she been properly informed of the Rules, it is submitted that she would have been more forthright with investigators and the final three charges may have never occurred.

(b) When Mr Robinson asked who had given Ms Ross the collar, and she asked if she had to tell him, he told her she didn't have to if she had a problem with it, and then when interviewed by Mr Cruickshank, he initially said to her "it doesn't matter how you got it". (Page 7, RIU Interview). That position changed markedly when Mr Cruickshank subsequently demanded to know who gave it to her. (Page 10, RIU Interview). It is submitted that to first be told by one Official that one is not required to do something, and then told something else by another, would have, understandably, caused confusion. Had Mr Robinson told Ms Ross that yes, she did have to tell him, or that she may have to if questioned by the RIU, again the outcome may have been very different. Further, it is apparent that Ms Ross was not, at the point of being questioned by Mr Cruickshank, acting in her own advancement. She was concerned about protecting a friend who had loaned gear to her. (Ms Ross said "it doesn't belong to me. And if it gets taken off me what do I, what do I do to the people." Pages 6-7 of RIU Interview). Had she not been incorrectly informed that having a collar on a property was a breach of the Rules, it is submitted that she would have no reason to be concerned with protecting Mr Black's identity. He uses the collar for his pig dogs, which is something he is perfectly entitled to do. However, based on what Ms Kinsey and Mr Cruickshank told Ms Ross, she was incorrectly lead to believe that by admitting Mr Black owned a collar he would also be charged.

(c) Further, as Ms Kinsey noted, even if the collar was not working it was still not "permitted gear". It is submitted that the much more appropriate course of action in this instance would have been for a charge pursuant to Rule 44.13.

## **Sentencing**

49. The principles of sentencing are well-established and referred to in many prior decisions. In summary, these are:

(a) Penalties are designed to punish the offender for his / her wrong doing. They are not meant to be retributive in the sense the punishment is disproportionate to the offence but the offender must be met with a punishment.

(b) In a racing context it is extremely important that a penalty has the effect of deterring others from committing similar offences.

(c) A penalty should also reflect the disapproval of the JCA for the type of behaviour in question.

(d) The need to rehabilitate the offender should be taken into account. This means taking into account that the penalty is not designed to drive a person from the Industry. Rather, to achieve the other principles but allow the chance to show that the behaviour will not be repeated.

50. It is submitted, that as an overall starting point, the context of what occurred on 9 July must be taken into account. This is not a case of a Trainer mistreating an animal, or doing something to it to enhance its performance. Ms Ross was trying to find a way to keep the dog calmer in the kennels to prevent it from injuring itself.

## **Information No A8717**

*THAT on the 9th day of July 2020, at 158 Park Road, Horotiu did obstruct a Racing Integrity Unit Official, who was undertaking an investigation into the use of an electronic aversion device, by refusing to answer questions related to the investigation thereby committing a breach of Rule 62.1 (g) of the New Zealand Rules of Greyhound Racing AND IS therefore liable to the penalty or penalties which may be imposed pursuant to Rule 63.1 of the said Rules.*

51. The summary of facts records that Ms Ross was obstructive, gave misleading answers and refused to say where the working shock collar was.

52. In the case of RIU v Lowen dated 2 November 2016, Mr Lowen obstructed the RIU from conducting a kennel inspection. The RIU arrived at his property at 8.55am one morning and Mr Lowen refused to allow them entry to inspect the kennels and threatened to call the police. The RIU Investigators left without conducting the inspection. Mr Lowen received a 3 month suspension and was ordered to pay \$500 costs to each of the RIU and JCA. It is submitted that the offending in Lowen is much worse than in this case. It can be implied that Mr Lowen had something to hide in refusing the inspection.

53. Ms Ross was obstructive in that she did not want the Investigators to have the electronic collar and took some minutes before she produced it, but that was plainly because she did not want someone else's property to be confiscated. (Page 7, RIU Interview). She did in fact produce the collar before the Investigators left the property.

54. Further, as noted, she was acting under the information of the RIU that even having a shock collar on her property was in breach of the Rules. As submitted earlier, this was misinformation which should be taken into account.

55. It is submitted that as Ms Ross produced the collar, no fine should apply.

### **Information No A8718**

*THAT on the 9th day of July 2020, at 158 Park Road, Horotiu did fail to comply with the lawful order of a Racing Integrity Unit Official, by refusing to state the location of or provide to Officials all electronic aversion devices held on the property thereby committing a breach of Rule 62.1 (p) of the New Zealand Rules of Greyhound Racing AND IS therefore liable to the penalty or penalties which may be imposed pursuant to Rule 63.1 of the said Rules*

56. The summary of facts records that despite being directed to do so, Ms Ross initially refused to produce the working shock collar to the RIU Investigator. She eventually did produce it, some minutes later. So while there has been a plea of guilty to this charge, it is submitted that there was technically no breach as the order was followed, albeit delayed.

57. It is submitted that Charges A8717 and A8718 are essentially in relation to the same thing – the initial refusal to provide the electronic collar which was rectified.

58. I have been unable to find any fact-similar cases. In RIU v C D Steele 18 September 2019, Mr Steele went to the Stewards room wanting to know why certain dogs had been swabbed. He refused to leave the room when ordered to do so. He had a similar previous offence for an altercation with officials for which he was fined \$300. In this second case, he was fined \$400.

59. It is submitted that as the order was followed (and only delayed by some minutes) that no fine should apply.

### **Information No A8718**

*THAT on the 9th day of July 2020, at 158 Park Road, Horotiu did make a statement which was known to be false to a Racecourse Investigator in the execution of his duty thereby committing a breach of Rule 62.1 (w) of the New Zealand Rules of Greyhound Racing AND IS therefore liable to the penalty or penalties which may be imposed pursuant to Rule 63.1 of the said Rules.*

60. The summary of facts records that Ms Ross refused to tell the RIU Investigators who had provided her with the electronic collar and said she didn't think the person was Licenced.

61. In RIU v Robinson 28 April 2011, Mr Robinson lied about where he got a prohibited substance from in order to protect the veterinarians who had given it to him. The JCA said this was no excuse and it unnecessarily prolonged the investigation. Mr Robinson was suspended for 3 months on that charge, to be served concurrently with a 6 month suspension for the use of the prohibited substance.

62. In RIU v R J Butt 1 August 2011, Mr Butt lied about the cause of a puncture to the wheel of his sulky and sought to use the Sulky fund for replacement and repair. It transpired that the puncture had not occurred "in the chute on the way back to the stables" but had occurred during the race when struck by a trailing runner. The primary reason for Mr Butt's false statement was to protect another open horseman from getting into trouble. Mr Butt received a two week suspension and a \$400 fine.

63. In RIU v S A Dolan 15 January 2020, Mr Dolan lied about where a horse had been stabled. If he had been honest that the horse had been stabled elsewhere, it would have been a Minor Infringement and \$50 fine. However, the concern in this case was that in reliance on Mr Dolan's advice, the Steward's report contained incorrect information which the betting public are entitled to rely upon. This was particularly evident as the horse exceeded all previous performances to a significant extent, and the JCA found that to be because of the alternative stabling. The JCA said:

[22] Notwithstanding Mr Dolan's self-confessed naivety and his view that "what no one knows won't hurt them", his conduct on this occasion constitutes a serious racing offence and, indeed, wilfully supplying any false or misleading information to Stewards is always a serious matter. The integrity of Harness Racing demands that Industry participants be "up front" at all times with Stewards and other officials.

[23] There is no evidence that Mr Dolan had any sinister motive in concealing the true situation from Mr Renault. On the one hand, it was probably a silly error of judgment on his part but, on the other hand, there could be a perception that there may have been an ulterior motive for concealing important information concerning TALL POPPY's training regime, information that Mr Dolan was required under the Rules to report to Harness Racing New Zealand.

64. Weighing up the aggravating factors (lying twice in separate interviews on race day and only admitting when confronted the following day) against the mitigating, namely Mr Dolan's good record and eventual admission of the breach, Mr Dolan was fined \$1,500.

65. It is submitted that the offending in this case is not anywhere near the seriousness of the Robinson decision and sits somewhere below the Butt and Dolan decisions. In both Robinson and Dolan, the offending to which the lies related were in relation to offending that would give an advantage to the animals on race day.

66. The use of the collar was not going to give "Buzz" any advantage on raceday. Ms Ross lied to protect another Licenced person. While that is not excusable, it was not for her own gain. Further, it is submitted that she would not have had any cause to lie if she had not been provided with misinformation at the outset from both Ms Kinsey and Mr Cruickshank, that having an electronic collar in one's

possession was in breach of the Rules. Once again, it is not submitted that this is a defence but the RIU should take some responsibility for creating an environment which was unhelpful in obtaining the appropriate answers.

67. It is submitted that a starting point of a two week suspension is appropriate (as time already served).

### **Discussion on sentencing**

68. It is submitted that the 8 week exclusion Ms Ross has already been subjected to has amounted to a punishment exceeding the gravity of all of the offending, in light of all of the circumstances which lead to that offending.

69. The cost of the existing exclusion order is approximately \$10,000 in direct financial returns from racing and time of 8 weeks already served plus at least a further four weeks once the dogs can return to the tracks for training.

70. It is submitted that such a result has not only had significant consequences for Ms Ross financially, it has taken a significant emotional toll on her, such which will ensure that she never repeats any similar offending. It is further submitted that the consequences have been serious enough to achieve all of the sentencing principles without the need for further penalty.

71. Ms Ross made early guilty pleas to three of the charges, and it is submitted that credit should be applied for that. Ms Ross has a good character, is respected in the industry, and is known as being a good Trainer who loves her dogs and treats them well. This behaviour was entirely out of character for her and it is submitted that there is no risk of reoffending.

72. Ms Ross is on the pension. She does not own any significant assets and rents a property to live in. Training and racing dogs is her passion and joy and also supplements her pension. It is submitted that she should be entitled to be rehabilitated and return to the Industry.

73. She has four dogs on her property – two of which she wholly owns, one which she owns a half share of, and “Buzz”, who is owned by Mr Muncaster.

74. At most, Ms Ross can expect winnings of approximately \$10,000 per quarter (before expenses) if the dogs are uninjured and running well.

75. Ms Ross has served an effective disqualification for 8 weeks (to the date of hearing), incurred legal fees, and both her and the dogs have suffered from the inability to train and race.

76. Ms Ross has the financial ability to pay a modest fine if required.

### **REASONS FOR DECISION**

(a) Ms ROSS has admitted the charges set out in Informations numbered A8717, A8718 and A 8719 and therefore they are proved. The guilty pleas all three charges referred to in the aforementioned Informations were confirmed to the Committee at the commencement of the defended hearing in respect to the charge under Information number A8716.

(b) The charge under information number A8716 has been defended by Ms ROSS. Several of the witnesses for the RIU were in fact friends and associates of Ms Ross and spoke very well of her. Before making a decision it is necessary for us to look at the wording of the charge and that wording is as follows:-

“Did an act detrimental to the interests and welfare of Greyhound racing by using a dummy electronic aversion devise (shock collar) in breach of New Zealand Greyhound Racing Health and Welfare Standards thereby committing a breach of rule 62.1(q)”.

Clause 4.6 of the NZGR Health and Welfare Standards very specifically says :-

“The use of aversive electronic training devices is prohibited”.

Rule 62.1(q) says:-

*“Any person (including an Official) commits an offence if he/she commits or omits to do any act or engages in conduct which is in any way detrimental or prejudicial to the interests, welfare, image, control or promotion of Greyhound Racing”.*

It is hard to see how Ms Ross could defend that charge and by her own evidence (in paragraphs 12, 15, 16, 18 to 23 inclusive) and based on the evidence on Ms Toomath it is very clear to us that Ms Ross has breached Rule 4.6 of the GRNZ Health and Welfare Standards and consequently committed a breach of Rule 62.1(q) of the Greyhound Racing New Zealand Rules of Racing.

The charge is accordingly upheld.

### **PENALTY REASONS**

(a) The integrity of racing is paramount and all participants in the Racing Industry need to always be aware of this. An Industry that is reliant upon the gambling dollar needs to always uphold its integrity to retain the public's confidence.

(b) This case involves animal welfare and it is very important that we maintain proper Animal Welfare in all three Racing Codes. Greyhound Racing in recent years has experienced unfortunate animal welfare publicity both in New Zealand and importantly in

Australia.

A shock/barking collar does not necessarily require a remote to work and can be activated via noise.

If the general public were persuaded/influenced by participants' actions that shock collars were used in training of greyhounds the result to the Industry would be dire.

We are told that Ms ROSS did not use the shock collar on "Sovereign Pride" but it is hard to accept this bearing in mind the evidence given by Ms ROSS at this hearing. In paragraph 15 of her evidence Ms ROSS says:-

"at the races on Thursday 25 June 2020 Jimmy gave me a plastic bag. He told me that it had an electric collar in there and that he had thrown a broken collar in there too which I could use as a dummy collar".

It would seem from that that the focus of being given the plastic bag was that Ms ROSS was being given an electric collar and the dummy was an afterthought. Further in paragraph 16 Ms ROSS said:-

"I took the collars home and looked at them. I turned on the remote for the working one and tried it out on my hand. I could not get it to do anything".

Why would Ms ROSS turn on the remote for the working collar and try it out on her hand if she did not intend to use it.

Greyhound Racing New Zealand has made great strides in recent years in developing Health and Welfare Standards for Greyhounds and the current Code which has been effective from 1 August 2018 is a fine example of this.

Mr Kingsnorth has told us that Greyhounds are working dogs but that is simply incorrect.

(c) We are however faced with a conundrum in that we are dealing with a serious charge under the Rules in that it involves animal health and welfare and as such would normally attract a significant penalty. The RIU has asked for a disqualification of Ms ROSS for three years and in support of that the RIU has relied on the recent case of RIU v McGrath. On the other hand, we are dealing with a 74 year old lady who has been training and racing Greyhounds for over 30 years. Ms ROSS tells us that in 2000 she was fined and suspended for using a banned substance on her dogs but apart from that she has an excellent record. She is to be given credit for that.

The witnesses including several for the RIU and the witnesses for Ms ROSS speak very highly of her and the way she looks after her animals. This charge is out of character for Ms ROSS although we do need to keep in mind her evidence.

Ms Toomath told us that Ms ROSS put the collar on the dog in the kennels at the racecourse and this is not the action of someone who is being secretive or dishonest.

Ms ROSS tells us that she was not aware of the Rule but ignorance of the Rule is no excuse and by her own admission in reference to her charge in the year 2000 she said she was unaware of the Rule change prohibiting its use. Ms ROSS needs to become much more familiar with the Rules.

These charges need to be dealt with by way of disqualification because of the serious nature of them. The RIU is looking for a disqualification for three years but we believe that that is excessive. This is on the basis of Ms ROSS' age and good record.

We deal with the charges as follows:-

(i) In respect to the charges under Informations number A8717, A8718 and A8719 we impose a period of disqualification of three months on Ms ROSS. This however will be backdated to 13 July 2020. This disqualification will also be served concurrently with the disqualification in respect to the charge under Information A8716.

(ii) In respect to the charge under Information number A8716 we impose a period of disqualification of 15 months and this is to be backdated to the commencement of the Exclusion Notice on 13 July 2020. The Exclusion Notice is hereby released.

We acknowledge that disqualification will cause difficulties for Ms ROSS but that is part and parcel of the imposition of this form of penalty. A period of disqualification is necessary in the interest of deterrents and in particular in order to uphold and maintain the high standards expected of those participating in the sport of Greyhound Racing to protect the good reputation of the Racing Industry and most importantly in this case to reinforce the integrity of the Rules of Greyhound Racing New Zealand.

## **COSTS**

At the time that Ms ROSS through her Counsel indicated that she would be defending the charges albeit finally defending one charge. Mr Cruickshank on behalf of the RIU submitted that the RIU would be seeking costs. Bearing in mind that it was difficult to see how the charge could be defended then costs should be awarded.

We therefore order that Ms Ross pay costs to the RIU in the amount of \$1,450.

We also order that Ms Ross should pay a contribution to the JCA costs and we calculate that amount to be \$750.

Dated this 24th day of September 2020

Bryan Scott

Chairman

**Penalty:**